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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Barrett E. Cole et al.

Title: DUAL COLOR STUDA

Docket No.: H0002243.33725

Filed: February 22, 2002

Examiner: Douglas A. Wille

Serial No.: 10/081,369

Due Date: May 29, 2006

Group Art Unit: 2814

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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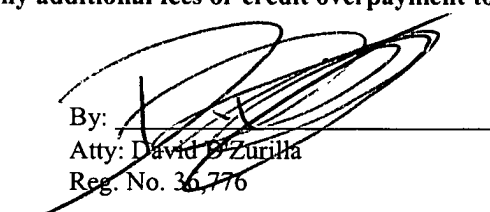
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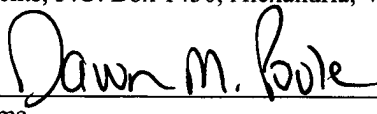
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(GENERAL)



S/N 10/081,369

PATENT

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REPLY BRIEF UNDER 37 C.F.R. § 41.41

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This Reply is presented in response to the Examiner's Answer, dated March 29, 2006, which was sent in answer to Appellant's Appeal Brief, filed on March 2, 2005. Appellant's Appeal Brief was filed in response to the rejection of claims 1-17 and 19-24 of the above-identified application.

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REPLY

Paragraph 2 of the Examiner's Answer maintains the rejection of claims 1-4 and 9 under 35 USC § 103(a) as being unpatentable over Cole et al. in view of Tokuda et al.

In ¶ 3 of the Examiner's Answer, the Examiner states that Cole et al. show a detector for spectroscopic detection with detectors 14 and tunable Fabry-Perot filter 20, 22. The Examiner further states that Tokuda et al. show a detector with stacked detectors with different wavelength sensitivity which has enhanced wavelength selectivity. The Examiner then states that it would have been obvious to use the Tokuda detector in the Cole device to improve the wavelength sensitivity.

The Examiner's answer fails to point out where in either reference the claim elements of a first detector responsive to a low wavelength band and a second detector responsive to a high wavelength band, wherein the combined low band and high band are wider than can be detected by either the first or second detector, are disclosed. Since the cited prior art fails to show at least these claim elements, a *prima facie* case for obviousness has not been made, and the rejection of claim 1-4 and 9 should be overruled.

In ¶ 8 of the Examiner's Answer, claims 5-8 and 12 are rejected under 35 USC 103(a) as being unpatentable over Cole et al. in view of Tokuda et al. and further in view of Heir et al. and Koslowski et al.

Claims 5-8 are dependent on claim 1, and thereby contain all the limitations of claim 1. Claim 12 is dependent on claim 10, which like claim 1, recites the limitation that "the combined low band and high band are wider than can be detected by either the first or second detector." The Examiner, in ¶¶ 9-11, does not assert that either Hier et al. or Koslowki et al. disclose at least the element of a "combined low band and high band [that] are wider than can be detected by either the first or second detector." Consequently, a *prima facie* case of obviousness has not been made, and the rejection of these claims should be overruled.

In ¶ 12, the Examiner states that claims 10, 11, 13-17, 19, 23, and 24 were rejected under 35 USC § 103(a) as being unpatentable over Cole et al. in view of Tokuda et al. and Yokoi.

Independent claims 10 and 24, like claim 1, both recite a first detector responsive to a low wavelength band and a second detector responsive to a high wavelength band, and further that

the “combined low band and high band are wider than can be detected by either the first or second detector.” As pointed out above, neither Cole et al. nor Tokuda et al. disclose this feature, and the Yokoi reference does not remedy this shortcoming. A *prima facie* case of obviousness has therefore not been made, and the Applicant respectfully submits that the rejection of these claims be overruled.

In ¶ 19, the Examiner’s answer rejects claims 20-22 under 35 USC § 103(a) as being unpatentable over Cole et al. in view of Tokuda et al. and Yokoi and further in view of Hier et al. and Koslowski et al.

Claims 20-22 are dependent on claim 10, thereby containing the limitations of a first detector responsive to a low wavelength band and a second detector responsive to a high wavelength band, and further containing the limitation that the “combined low band and high band are wider than can be detected by either the first or second detector.” As pointed out above, none of these references disclose these elements. Therefore, a *prima facie* case of obviousness has not been established. The Applicant respectfully requests the overruling of this rejection.

In its brief, the Appellant pointed out that the purpose of the claimed structure is to detect the entire bands passed that a single detector cannot fully detect, and that the Cole reference was not faced with detecting a band of radiation that was wider than could be detected by a single type of detector. The Examiner responded by stating that the purpose of a claimed device has no bearing on claims drawn to a structure, and that the language in the claim relied upon to distinguish over Cole was deleted to avoid a 112 rejection.

The Appellant notes that the amendment to which the Examiner refers was made to more clearly state that the detectors themselves are responsive to different wavelengths passed by the bandpass filter, rather than generalizing that the spectrum of light passed by the filter is wider than can be detected by any type of detector. The Appellant further notes that pending claim 1 still recites that the “combined low band and high band are wider than can be detected by either the first or second detector.” The Applicant therefore stands by its contention that the purpose of the claimed structure is to detect the entire bands passed that a single detector cannot fully detect, that the Cole reference was not faced with detecting a band of radiation that was wider than could be detected by a single type of detector, and that the claims at issue recite this feature.

On page 7 of the Examiner's Answer, in response to the Appellant's statement that the Tokuda et al. reference is directed to distinguishing between two wavelengths, not detecting a broad spectrum, the Examiner states that the Appellant has a basic misunderstanding of how a Fabry-Perot filter works. The Examiner contends that a Fabry-Perot filter may be scanned to produce a spectral region. Irrespective of the accuracy or inaccuracy of this characterization of a Fabry-Perot filter, this contention by the Examiner adds little to the debate. The claims recite a bandpass filter to provide an input to a first and second detector, and the output of that bandpass filter is a spectrum of wavelengths. That a Fabry-Perot filter may be used as the bandpass filter (as specifically recited in dependent claim 4) is of little moment. More tellingly, the Examiner did not assert in his Answer that the relatively wide spectral region of a Fabry-Perot filter functions as a first detector and a second detector that are responsive to a low wavelength band and a high wavelength band respectively, and that the low wavelength band and high wavelength band are wider than that which can be detected by either the first or second detector.

In its brief, the Appellant pointed out that combining Cole et al. with Tokuda et al. would only result in the ability to distinguish between different frequencies, not to detect high and low bands. In his Answer at page 8, the Examiner responds by arguing that detecting different frequencies is the function of the claimed device and the prior art. The Appellant respectfully submits that there is a distinct, patentable difference between distinguishing between frequencies as in the prior art, and detecting a high and a low band with two detectors wherein the two bands could not both be detected by either one of the individual detectors.

On page 9 of the Examiner's Answer, the Examiner states that there is nothing in the claimed device that will provide a capability not shown by the cited references. The Examiner repeats this contention on page 11 of the Examiner's Answer. The Applicant respectfully disagrees, and respectfully submits that the cited references do not show a first detector that detects a low wavelength band and a second detector that detects a high wavelength band, wherein the low band and high band are adjacent bands of wavelengths, and further wherein the combined low and high band are wider than can be detected by either the first detector or the second detector. The Examiner's Answer has simply failed to show where in the cited references that these claimed elements are disclosed.

Dependent claims that are not specifically addressed in this Reply Brief are believed to depend from allowable claims, and as such, are believed allowable. Additionally, arguments in the Examiner's Brief not specifically addressed in this Reply Brief are not germane to the primary issues in the Appeal such as whether the cited references disclose all the elements of the pending claims. Additionally, the Appellant respectfully maintains that the Appeal Brief, which is hereby incorporated by reference and reasserted in response, overcomes the original grounds of rejections.

Conclusion

The pending claims subject to this appeal are believed patentable. Appellant respectfully submits the claims are in condition for allowance and requests the Board issue an order to withdraw the rejections of claim 1-17 and 19-24.

Respectfully submitted,

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May 25, 2006

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